IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 839 OF 2004

SMT. SAMITA SURESH SARDAL & ORS. APPELLANTS

Versus

SANJAY B. DANTI & ANR. .. RESPONDENTS

Mr. M. B. Kotak for appellants

None for R-1

Mr. C. Venkatachellam for R-2

CORAM:-SMT. RANJANA DESAI &

D.B. BHOSALE, JJ.

DATED:- 9/1/06

ORAL JUDGMENT:-(Smt. Ranjana Desai, J.)

. This first appeal is directed against the judgment and order dated 10/6/2003 passed by the Member of Motor Accident Claims Tribunal, Mumbai at Mumbai in Application No. 1410 of 1999.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act. It arose out of vehicular accident dated 18/2/99 in which vehicle Bus No. MH-02-9796 was involved. Suresh Gangaram

Sardal, the husband of appellant and father of appellants 2 & 3 died in the said accident. By the impugned order the Tribunal has awarded total compensation of Rs.11,67,000/- inclusive of no fault liability amount of Rs.50,000/- to the appellants. The Tribunal has also directed the opponent to deposit the amount so awarded along with interest @ 9% per annum from the date of award till amount is realised.

3. We have heard the learned counsel appearing for the parties.

4. Mr. Kotak, learned counsel for the appellants contended that the appeal is restricted only to the rate of interest and costs of the application. He submitted that the learned Member erred in awarding the interest from the date of award. He contended that the interest should be awarded from the date of making the claim i.e. date of application. He also submitted that the Tribunal erred in not awarding costs to the appellants. In support of his submissions the learned counsel has cited certain judgments of this court as well as the Supreme Court.

5. As regards the rate of interest there is no rigid formula and the rate of interest to be awarded it is at the discretion of the court. The exercise of this discretion has to be proper. Factors like prevailing rate of interest, bank rate, period to which it relates may be taken into consideration. Viewed from these angles we do not find any infirmity in the rate of interest awarded @ 9% per annum.

6. Mr. Kotak contended that rate of interest ought to have been @ 12% per annum. We may in this connection usefully refer to the judgment of the Supreme Court in **Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya & Ors, 2005(2) T.A.C. 305 (S.C.)**, where the Tribunal had awarded interest @ 9% per annum from the date of claim petition. The Supreme Court took note of prevailing interest in bank deposit and reduced the rate of interest to 7.5% per annum. In our opinion, therefore, no interference is necessary with the rate of interest.

7. So far as the contention that interest should have been awarded from the date of application is concerned, we find even on that aspect interference

is not necessary. Considering the facts and circumstances of the case, the courts exercise their discretion to award interest either from the date of the application or from the date of the order. Even a bare reading of Section 171 of the Motor Vehicles Act, 1988 makes it clear that whether to award interest from the date of making the claim or from anytime thereafter is at the discretion of the court. In the facts of this case there is no arbitrariness in awarding interest from the date of award. Therefore, this submission must also fail.

8. We, however, find substance in Mr. Kotak's submission that the Tribunal ought to have awarded costs to the appellants. In prosecuting the claim petition, the claimants do incur substantial costs. Merely because they are awarded a large sum, they cannot be deprived of costs. There is no logic behind such approach. Similar view has been taken by this court in **United India Insurance Co. Ltd. v. Mathurabai & Ors., 1986 ACJ 1092**. Considering the present inflationary situation and of course in the peculiar facts of this case, in our opinion, the appellants are entitled to costs quantified at Rs.7,000/-. Hence the following order:-

a) Respondent No. 2 United India Insurance Co. Ltd. is directed to pay to the appellants, costs quantified at Rs.7,000/-. Costs may be paid within a period of six weeks from today. Apart from this no interference is necessary with the rest of the judgment.

b) Appeal is disposed of in the aforestated terms.

(SMT. RANJANA DESAI,J.)

(D. B. BHOSALE, J.)